

DEPARTMENT OF STATE

Office of the Secretary

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCIES: Office of the Secretary, DOS; Office of the Secretary, DHS

ACTION: Notice of determination

Authority: 8 U.S.C. § 1182(d)(3)(B)(i)

Following consultations with the Attorney General, the Secretary of State and Secretary of Homeland Security have determined that the grounds of inadmissibility at section 212(a)(3)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(3)(B), bar certain individuals who do not pose a national security or public safety risk from admission to the United States and from obtaining immigration benefits or other status. Of particular concern, these grounds of inadmissibility bar some individuals who actively assisted U.S. efforts in Afghanistan and now seek and deserve the protection of our Government.

Accordingly, consistent with prior exercises of the exemption authority, the Secretary of State and the Secretary of Homeland Security hereby conclude, as a matter of discretion in accordance with the authority granted by section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(d)(3)(B)(i), as amended, after considering the foreign policy and national security interests deemed relevant in these consultations, that section 212(a)(3)(B) of the INA, 8 U.S.C. § 1182(a)(3)(B), excluding subclause (i)(II), shall not apply with respect to an individual for any activity or association relating to actions:

- (1) directed against the Afghan Taliban or Afghan Taliban-affiliated militia groups;

(2) directed against any other organization that was engaged in violent activities that targeted the United States or allied entities, including (a) any entity or contractor of the United States government or any individual employed by or on behalf of the United States government, (b) the International Security Assistance Force (ISAF) or any successor name of such Force, (c) the United Nations, or (d) the government of the Islamic Republic of Afghanistan or the Afghan Transitional Authority during the time period from December 22, 2001 to August 15, 2021; or

(3) directed against the army of the Union of Soviet Socialist Republics (USSR) or the government of the Democratic Republic of Afghanistan between April 27, 1978 and April 28, 1992,

provided that the individual satisfies the relevant agency authority that the individual:

(a) is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) has undergone and passed all relevant background and security checks;

(c) has fully disclosed, to the best of their knowledge to relevant U.S. government entities, the nature and circumstances of all activities or associations falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. § 1182(a)(3)(B);

(d) has not participated in, or provided material support for the commission of, a terrorist activity that they knew or reasonably should have known targeted noncombatant persons or U.S. interests;

(e) is not otherwise inadmissible under section 212(a)(3)(B) of the INA, 8 U.S.C. § 1182(a)(3)(B), for which no exemption applies;

(f) has not been indicted by any international tribunal or the International Criminal Court;

(g) has not voluntarily and knowingly engaged in any terrorist activities on behalf of, or provided any material support to any organization which has ever been designated a terrorist organization as described in section 212(a)(3)(B)(vi)(I) or (II) of the INA, at any time, including prior to that organization's designation, unless the activities are otherwise exempted;

(h) has not committed, ordered, incited, assisted, or otherwise participated in acts of torture, as defined in 18 U.S.C. § 2441(d)(1)(A), or genocide, as defined in 18 U.S.C. § 1091(a); or recruited or used child soldiers, as described in 18 U.S.C. § 2442;

(i) has not been identified in either Executive Order 13224, as amended, or otherwise designated by the Secretary of State or the Secretary of the Treasury pursuant to the Specially Designated Nationals List (SDNL), or in lists established by United Nations Security Council Committee pursuant to Resolutions 1267 (1999) or 1988 (2011) concerning Al-Qaida and the Taliban and associated individuals and entities;

(j) poses no danger to the safety and security of the United States; and

(k) warrants an exemption from the relevant inadmissibility provision(s) in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS) or by U.S. consular officers, as applicable, and in consultation with relevant U.S. government entities, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

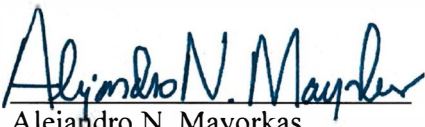
This exercise of authority may be revoked as a matter of discretion and without notice at any time, with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. § 1182(d)(3)(B)(ii), a report on the individuals to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: June 8, 2022


Alejandro N. Mayorkas
Secretary of Homeland Security


Antony J. Blinken
Secretary of State