Overview

• The creation and evolution of TRIG
• What is TRIG? How does it work?
• TRIG implications for asylees and refugees
• How to screen for TRIG/practice tips
• Exceptions, exemptions and holds
• Hypos!
• TRIG issues post-filing
• Where do we go from here?

Statutory Evolution of TRIG

• 1990 Immigration Act: Added new ground of inadmissibility for terrorist activity, including “engaging in terrorist activity”; “material support” was a form of engaging in terrorist activity
• 1996 AEDPA: Expanded TRIG grounds; created process of designating Foreign Terrorist Organizations under INA § 219 (Tier I terrorist organizations)
• 1996 IIRIRA: Further expanded TRIG grounds
• 2001 USA PATRIOT Act: Expanded TRIG grounds; created Tier II, Tier III terrorist organizations; created exemption provision for material support at INA § 212(a)(3)(B)(iv)(VI) (later supplanted)
Statutory Evolution (cont.)

- **2005 REAL ID Act**: Expanded TRIG grounds; narrowed exceptions for activity relating to Tier III organizations, and linked TRIG to deportability (prior deportability ground in INA 237 for terrorism was narrower).

- **2007 Consolidated Appropriations Act (CAA)**: Created INA § 212(d)(3)(B)(i) exemption provision, which allowed Secretaries of DHS and State to exempt certain TRIG inadmissibility grounds (more later!)

Inadmissibility vs. Deportability

- **INA §212 Admissibility**
  - Assessed at port of entry when alien requests entry into U.S.
  - When alien applies for benefit such adjustment of status in U.S. or immigrant visa overseas.

- **INA §237 Deportability**
  - Applicable to admitted aliens

The Impact of TRIG Expansion:

"[T]he statutory language is breathtaking in its scope."


"Congress’s definition of ‘terrorist activity’ sweeps in not only the big guy, but also the little guy who poses no risk to anyone."

TRIG Holds and Exemptions

- INS began to hold material support cases involving duress in late 2000
- Colombian refugee processing brought the issue of "material support" to the forefront for former INS, forced payment of "vacuna" and ransoms to FARC and/or AUC
- The Refugee Program implemented initial guidance to consider a "duress exception" for such cases.
  - Under this guidance, if an applicant had been compelled or coerced to provide material support under threat of force or serious physical harm, adjudicators could determine that the inadmissibility ground did not apply.

Holds and Exemptions (cont.)

- In mid-2004, USCIS (and DHS) reexamined the issue and determined that there was no statutory basis to apply a duress exception in the material support context.
- In this same period, advocates pointed out to DHS that the INA provided (since 2001) an exemption provision that would allow DHS not to apply the material support ground—but there were no procedures or mechanisms for the consideration of this exemption.
- DHS decided to hold adjudication rather than to refer or deny applications where the material support was provided under duress.

What is TRIG?
INA §212(a)(3)(B)

- Has engaged in terrorist activity.
- Has instigated terrorist activity with intent to cause death or serious bodily harm.
- DHS has a reasonable basis to believe will engage in terrorist activity in the U.S.
- Is a representative of a terrorist group, or group that endorses or espouses terrorist activity.
- Is a member of a terrorist organization.
- Endorses or espouses terrorist activity or persuades others to do the same.
- Has received military-type training from a terrorist organization.
- Provided activities/conduct that occurred within the past five years.
Terrorist Activities Defined
INA §212 (a)(3)(B)(iii)

• The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).
• 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.
• A violent attack upon an internationally protected person.

Terrorist Activities Defined (Cont.)

• An assassination.
• The use of any biological agent, chemical agent, or 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.
• A threat, attempt, or conspiracy to do any of the foregoing.

Engaged In Terrorist Activity
INA §212 (a)(3)(B)(iv)

• To commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity.
• To prepare or plan a terrorist activity.
• To gather information on potential targets for terrorist activity.
• To solicit funds or other things of value for—1) a terrorist activity, or 2) Tier I, II, or III organization.
Engaged In Terrorist Activity (Cont.)

• To provide material support
  • for the commission of a terrorist activity; OR
  • to any individual who the actor knows, or
to reasonably should know, has committed or plans to
commit a terrorist activity; OR
  • To a Tier I, II, or III group.

Material Support
INA §212 (a)(3)(B)(iv)(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; for
commission of a terrorist activity, to a tier I, II or
III group, or to any individual that they should
have reasonably known would engage in
terrorist activity.

Tier I, II, and III Groups

• **Tier I:** Foreign Terrorist Organizations (FTOs),
designated.
  • http://www.state.gov/j/ct/rls/other/des/123085.htm
• **Tier II:** Terrorist Exclusion List (TEL), designated.
  • http://www.state.gov/j/ct/rls/other/des/123086.htm
• **Tier III:** Undesignated, "A group of two or more
individuals, whether organized or not, which engages in,
or has a subgroup which engages in, terrorist activity."
  • No list; any adjudicator can determine that a group is a Tier III
group
  • Some former Tier III groups now exempted through DHS
memos
TRIG Characteristics

- Based on conduct so immigration definition of “conviction” is absent from the assessment of whether TRIG applies.
- No “moral turpitude” or “good moral character” assessment.
- Terrorism definition missing analysis on the basis of ideology, objective, or historical outcome.
  - Applies to groups and individuals who have ever engaged in armed resistance to ANY government.
- 209(c) inadmissibility waiver NOT available for TRIG.

TRIG Implications for Refugees & Asylees

“Ironically, for many facing the terrorism bars, the very circumstances that form the basis of their refugee or asylum claim have been interpreted in a way that has made them ineligible for protection in the United States. For example, refugees, asylees, and asylum seekers who were coerced into giving goods or services to non-governmental armed groups are now being deemed ‘terrorists’ by the U.S. government. For other refugees, their support of a group that is associated with armed resistance against a government—even when that government has repressed the refugee’s ethnic or religious group and closed peaceful avenues to political change—has rendered them ineligible for protection under U.S. law.” (Combating the Terrorism Bars Before DHS and the Courts, AILA 2010)

How to Screen for TRIG

- I-485 Part 3, Question 4
  - Have you EVER engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or financial aid or have you through any means ever assisted or provided any type of material support of any person or organization that has ever engaged or conspired to engage in sabotage, kidnapping, political assassination, hijacking, or any other form of terrorist activity?
- N-400 Question 10, Part C
  - Have you EVER been a member of, or in any way associated (either directly or individually) with a terrorist organization?
- Group Membership (I-589, I-590, I-485 N-400)
  - Family member involvement
- Spouse & parent group membership or material support within past 5 years.
- IF TRIG PRESENT, now what?
  - Exceptions and/or Exemptions?
  - Inform client of risks of filing.
TRIG Practice Tips

- Screen, screen, screen!
- Group Membership – Check designated Tier I/II lists:
  - [http://www.state.gov/j/ct/rls/other/des/123085.htm](http://www.state.gov/j/ct/rls/other/des/123085.htm)
  - [http://www.state.gov/j/ct/rls/other/des/123086.htm](http://www.state.gov/j/ct/rls/other/des/123086.htm)
- If TRIG issue, FOIA before filing.
  - Verify prior disclosure on I-589 and I-485 (if natz).
- ALWAYS inform client of risks of filing / not filing.
- During interview, if Officer initiates sworn statement inquiring about group involvement, it could be for TRIG purposes.
- Email TRIGQuery@uscis.dhs.gov
  - Inquire if Tier III group.
  - Follow-up on possible TRIG hold.

Statutory Exceptions

- §212(a)(3)(B)(i)(VI) For Tier III members who did not know or should not reasonably have known that group was engaging in terrorist activity.
- §212(a)(3)(B)(iv)(IV), (V) and (VI) For soliciting funds or other things of value, soliciting an individual for membership in, OR committing an act on behalf of a Tier III group where the individual 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.

Statutory Exceptions (cont.)

- §212(a)(3)(B)(ii) for 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.
Discretionary Exemption Authority in §212(d)(3)(B)

- The Secretaries of State and Homeland Security (in cooperation with the AG) can grant exemptions from the terrorism-related inadmissibility grounds for much of the activity covered under the statute:
  - Situational Exemptions
  - Group Based Exemptions

Threshold Requirements

In order to be considered for an exemption from the TRIG provisions, the applicant must:

- Establish that he or she is otherwise eligible for the immigration benefit
- Undergo and pass all required background and security checks;
- Fully disclose, in all relevant applications and interviews with USG representatives and agents, the nature and circumstances of each provision of material support; and
- Establish that he or she poses no danger to the safety and security of the United States.

<table>
<thead>
<tr>
<th>Situational Exemptions To Date</th>
<th>Group-Based Exemptions To Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Material Support Under Duress</td>
<td>All Burma Students Democratic Front (ABSDF)</td>
</tr>
<tr>
<td>Solicitation Under Duress</td>
<td>All India Sikh Students Federation-Bittu Faction (AISSF-Bittu)</td>
</tr>
<tr>
<td>Military-Type Training Under Duress</td>
<td>Iraqi National Congress (INC), Kurdish Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK)</td>
</tr>
<tr>
<td>Voluntary Medical Care</td>
<td>10 Named Organizations in the Consolidated Appropriations Act of 2008 (CAA)</td>
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<tr>
<td>Certain Applicants with Existing Immigration Benefits</td>
<td>Certain Association or Activities with the Kosovo Liberation Army (KLA)</td>
</tr>
<tr>
<td>Certain Limited Material Support</td>
<td>Iraqi Uprisings</td>
</tr>
<tr>
<td>Insignificant Material Support</td>
<td>Farabundo Marti para la Liberacion National (FMLN)</td>
</tr>
<tr>
<td></td>
<td>Nationalist Republican Alliance (ARENA)</td>
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<td></td>
<td>Ethiopia People's Revolutionary Party (EPRP)</td>
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<td></td>
<td>Oromo Liberation Front (OLF)</td>
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<td></td>
<td>Tigray Peoples Liberation Front (TPLF)</td>
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<td></td>
<td>Democratic Movement for the Liberation of Eritrean Kunama (DMLEK)</td>
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<tr>
<td></td>
<td>Eritrean Liberation Front (ELF)</td>
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Exemptions Granted as of 12/31/2015

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<thead>
<tr>
<th>Total Exemptions Granted</th>
<th>19,764</th>
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<tbody>
<tr>
<td>Refugees</td>
<td>14,090</td>
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<tr>
<td>Group Exemptions</td>
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<tr>
<td>Burma</td>
<td>6,732</td>
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<td>Cuba</td>
<td>305</td>
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<td>Iraq</td>
<td>130</td>
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<td>Medical Care</td>
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<td>Tier III Duress Exemptions</td>
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<td>Tier II/III Duress Exemptions</td>
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<td>Group-based Exemptions</td>
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<td>Duress Exemptions</td>
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<td>Individual Exemptions</td>
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<td>Adjustment of Status/field Office</td>
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<tr>
<td>Asylum</td>
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<td>Tier III Material Support Duress Exemptions</td>
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<td>Individual Exemptions</td>
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<tr>
<td>NACARA</td>
<td>127</td>
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</tbody>
</table>

USCIS TRIG “Hold” Policy

- USCIS holds adjudication of cases when the exemption authority could cover an applicant’s activities, but there has yet to be an interagency decision to exercise authority for his/her case.

- This general hold policy was amended to allow for denials in cases in which an exemption would not be granted based on the totality of the circumstances even if an exemption were available.

Current Cases on TRIG Hold

<table>
<thead>
<tr>
<th>Total Cases on Hold as of Q3 FY16</th>
<th>2,229</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refugee</td>
<td>294</td>
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<tr>
<td>Service Center Operations</td>
<td>1,815</td>
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<tr>
<td>I-485</td>
<td>1,558</td>
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<td>I-751</td>
<td>214</td>
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<td>I-821</td>
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<tr>
<td>Asylum Division</td>
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<td>Asylum (I-589)</td>
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<tr>
<td>NACARA (I-881)</td>
<td>3</td>
</tr>
<tr>
<td>Field Office (I-485)</td>
<td>43</td>
</tr>
</tbody>
</table>
TRIG Hypo 1

- An asylee I-485 applicant was a member of the Unified Democratic Forces (FDU) of Rwanda. Her involvement in this group formed the basis of her asylum claim, as the group is one of the major opposition parties in Rwanda, led by opposition leader Victoire Ingabire. Your client was a card carrying member of the party, and says that the group was never involved in any terrorist activity or violent opposition to the ruling party government of Paul Kagame.

- TRIG present?
  - Probably not – However, Tier III groups not published, so unable to answer definitively.

- Exceptions/Exemptions?
  - Exception – If applicant “did not know or should not reasonably have known” that group was engaging in terrorist activity.
  - Exemption – Certain Applicants with Existing Immigration Benefits.

- Recommendation:
  - Apply for benefit. Advise client of potential risks if USCIS has concerns about this group. Note that exceptions are discretionary. “Did not know or should not reasonably have known” is a statutory exception but subjective.

TRIG Hypo 2

- A refugee naturalization applicant was a member of the All Burma Students' Democratic Front (ABSDF). He says he was involved in non-violent opposition to the government in Burma, and that he disclosed everything in his overseas refugee interview and on his I-485 application for adjustment of status. He does not know if any other ABSDF members were engaged in violent activities or protests against the government.

- TRIG present?
  - Yes – ABSDF Tier III Group.

- Exceptions/Exemptions?
  - Yes – December 29, 2010 Memo Exempting ABSDF.

- Recommendation:
  - Apply for benefit. Advise client of risks of filing, as exemptions are discretionary.

TRIG Hypo 3

- An Iraqi refugee I-485 applicant was a member of the Kurdistan Workers Party (PKK). His membership was over 5 years ago and he says that he and his family have now renounced their membership and prior involvement with the party. He also says that he disclosed everything during his overseas refugee interview, and that he was never personally involved in any violent activities or protests against the government.

- TRIG present?
  - Yes – PKK was added to State Dept. Designated Foreign Terrorist Organizations List on 10/8/1997.

- Exceptions/Exemptions?
  - No – Not for Tier I & II groups.

- Recommendation:
  - DO NOT apply for benefit – client is inadmissible/deportable because no exceptions/exemptions exist for Tier I & II groups.
TRIG Hypo 4

• An Eritrean refugee I-485 applicant and family members paid a ransom of $30,000 to unnamed assailants who kidnapped her brother-in-law in the Sudan, in order to secure his freedom. The kidnapping occurred after the client’s arrival in the U.S. so the client never had the opportunity to disclose to USCIS, so filing the I-485 for this client will bring the issue to USCIS’s attention.

• TRIG present?
  • Yes – Material support to organization/individual engaged in terrorist activity (i.e. kidnapping).

• Exceptions/Exemptions?
  • Exemption – Material Support Under Duress.
  • Exemption – Certain Applicants with Existing Benefits Exemption.

• Recommendation:
  • Apply for benefit. Advise client of potential risk even with exemptions (discretionary, group affiliation unknown).

TRIG Hypo 5

• A refugee I-485 applicant worked as a nurse in the Democratic Republic of Cong.: She says she provided medical treatment to rebels and government forces alike. She does not recognize the individuals she helped as belonging to any of the groups on the State Department Designated Terrorist lists.

• TRIG present?
  • Yes – Material support (medical assistance) to individuals engaged in terrorist activity (i.e. armed opposition to legitimate government).

• Exceptions/Exemptions?
  • Exemption – Voluntary Medical Care.
  • Exemption – Certain Applicants with Existing Benefits.

• Recommendation:
  • Apply for benefit. Advise client of potential risk even with exemptions (discretionary).

TRIG Issues Post Filing

• USCIS has sole authority to apply relevant exception or exemption automatically (if client applied pro se, or if TRIG issue was not found in screening) but potential non-disclosure issues.

• May receive a Request for Evidence or Interview Notice if USCIS has concerns re: non-disclosure or needs additional information.

• If no exemption exists, case may run outside normal processing times on TRIG hold.
  • Likely result in additional security/background checks.
TRIG Advocacy Efforts: where do we go from here?

• Expanding exemptions, both group and situational
• Continue using hold policy
• Statutory changes
• Media outreach and advocacy

Questions?

• Other best practices?
• Share your sample TRIG cases?

Contact Info:

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• Rebecca Schaeffer – RSchaeffer@cwsglobal.org

Thank you to our partners!