

**Impact of Amendments to Terrorism Bars and related Waivers in H.R. 2764 – State,
Foreign Operations, and Related Programs Appropriations Act, 2008**

I. The following individuals are no longer subject to inadmissibility/bars to asylum/refugee protection:

A. Individuals who were members of, representatives of or provided “material support” to or solicited funds for any of the following groups prior to 27 December 2007 (the date of enactment of the new law):

1. Karen National Union/Karen Liberation Army (KNU/KNLA)
2. Chin National Front/Chin National Army (CNF/CNA)
3. Chin National League for Democracy (CNLD)
4. Kayan New Land Party (KNLP)
5. Karenni National Progressive Party
6. Arakan Liberation Party (ALP)
7. Mustangs [Tibet]
8. Alzados [Cuba]
9. “Appropriate groups affiliated with the H’mong or Montagnards”

Note: **individuals associated with the above groups could still be barred** for engaging in terrorist activity themselves which includes, among others, activities such as:

1. soliciting funds for terrorist activity (as opposed to for a terrorist organization) ;
2. providing “material support” for the commission of a terrorist activity (as opposed to for a terrorist organization);
3. using any explosive, firearm, or other weapon or dangerous device (other than 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.

However, the new law **provides authority for a waiver** of any of these bars as indicated below in Section III(4).

B. Certain spouses and children are no longer barred. There are now two exceptions to the bar for spouses and children of individuals subject to one of the terrorist bars because of activity occurring within the last 5 years. Such spouses and children are not barred if

- they did not know or should not reasonably have known of the activity, or
- the consular officer or Attorney General has reasonable grounds to believe the spouse or child has renounced the activity.

Note: if the spouse or child does not fall within one of the exceptions, a waiver is available as indicated below.

II. The following individuals continue to be eligible for waivers:

1. Those who provided material support to a Tier III group regardless of whether support was provided under duress or not;

2. Those who provided material support to an individual who has engaged in terrorist activity regardless of whether support was provided under duress or not -- as long as the support was NOT provided "*on behalf of*" a Tier I or Tier II group;
3. Those who provided material support to a Tier I or Tier II group but did not do so "*knowingly and voluntarily*" (similar to duress).

III. The following individuals are now eligible for waivers:

1. Members and representatives of Tier III groups;
2. Those who have received military training from or on behalf of a Tier III group, or, in other words, received military training but *NOT from a Tier I or II group*;
3. Those who have *involuntarily or unknowingly* received military training from a Tier I or II group;
4. Those who have "engaged in terrorist activity" as long as the activity was *NOT "on behalf of" a Tier I or Tier II group*. Activities for which a waiver is available could include the following if committed on behalf of or as a member of a Tier III group or in an individual capacity :
 - a. soliciting funds for terrorist activity or a terrorist organization;
 - b. providing "material support" for the commission of a terrorist activity;
 - c. using any explosive, firearm, or other weapon or dangerous device (other than 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.
5. Those who have "engaged in terrorist activity" related to a Tier I or Tier II group but did not do so "*knowingly and voluntarily.*"
6. Spouses and children of individuals subject to one of the terrorist bars due to activity occurring within the last 5 years even if they knew or reasonably should have known of the activity or have not renounced the activity.

Note: The new law specifically prevents waivers for any *organization* which has engaged in:

- terrorist activity against the United States,
- terrorist activity against a democratic country, or
- a pattern or practice of terrorist activity that is directed towards civilians.

Thus, if a Tier III group has engaged in any of these activities, the waivers discussed in this paper for activity or membership related to a Tier III group might not be available.

IV. The following individuals are barred and NOT eligible for waivers:

1. Those whom a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable grounds to believe, is engaged in or is likely to engage after entry in any terrorist activity;
2. Representatives and members of a Tier I or Tier II organization.

V. Designation of Taliban as a Tier I Organization.

The legislation specifically designates the **Taliban** as a Tier I organization. It is not clear if this encompasses the time the Taliban were the government of Afghanistan.