

The Material Support Bar
Understanding Matter of A-C-M- and Matter of Neguise
By David Ayala (October 25, 2018)
Presentation at Univ. of Texas School of Law
42nd Annual Conference on Immigration & Nationality Law

I. INTRODUCTION

The persecutor bar is relevant in deciding applications for asylum and withholding of removal. It is not applicable to deferral claims under Article III of the Convention Against Torture. An applicant who has “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion is barred from asylum and withholding of removal. The persecutor/terrorist ground of inadmissibility has been in the Immigration Act since 1952 and has gone through modifications. Who is a persecutor and who is a victim has been addressed by Circuit Courts. The intent of this presentation is to discuss an overview of the legislation, provide the case law addressing the issue of the persecutor bar to asylum cases, and provide suggestions in addressing the issue in immigration proceedings. This presentation is not exhaustive and brilliant minds can differ and provide other alternatives.

II. TERRORIST LEGISLATION¹

1. 1952 -- sections 212(a)(27), (28), (29), and (33).
2. 1990 -- IMMACT 90 (adding section 212(a)(3)(B)).
3. 1996 -- Antiterrorism and Effective Death Penalty Act (adding section 219 – creating the definition of a terrorist organization)
4. 2001 – USA Patriot Act (expanding the definition of what is a terrorist organization.)

¹ See also Understanding The Terrorism – Related Inadmissibility Grounds: A Practitioner’s Guide by Melanie Nezer and Anwen Hughes -- 2009

III. DEFINITIONS

A. Terrorist activity -- 212(a)(3)(B)(iii)

The Immigration and Nationality Act defines the term “terrorist activity” and states examples of such occurrences. Terrorist activities are unlawful acts under the laws of the place where it is committed.

B. Terrorist organizations

The terrorist organizations are categorized in different tiers:

1. Tier I

Tier I organizations are referred to as “Foreign Terrorist Organizations” (FTOs). These organizations are designated by the Secretary of State upon a finding that the terrorist organization:

- a. is foreign;
- b. has engage in terrorist activity or terrorism, or retains the capability and intent to engage in terrorist activity or terrorism; and,
- c. is a threat to the security of U.S. nationals or the national security (national defense, foreign relations, or the economic interests) of the United States.

2. Tier II

The Secretary of State, in consultation with or upon the request of the Attorney General, may designate terrorist organizations as Tier II organizations for immigration purposes, after a finding that the organization engages in terrorist activity as defined in section 212(a)(3)(B)(iv) of the INA. This authority is known as the “Terrorist Exclusion List (TEL)” authority. A TEL

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First appeared as part of the conference materials for the
42nd Annual Conference on Immigration and Nationality Law session
"Hot Topics in Removal"